

Appeal from a decision of the Nevada State Office, Bureau of Land Management, denying an application for an extension of time to make final proof on desert land entry Nev-061603 and cancelling that entry.

Affirmed.

1. Desert Land Entry: Extension of Time

Where a desert land entryperson is allowed only one extension of time to file final proof under each of three statutes (43 U.S.C. || 333, 334, and 336 (1982)), and has received those three extensions, a further request must be denied, regardless of the authority cited by BLM in granting the extensions, because no further authority exists for approving extensions.

2. Desert Land Entry: Extension of Time--Estoppel

Where a desert land entryperson claims reliance on incorrect citations in BLM decisions granting extensions of time to file final proof, in order to claim the existence of authority for a further extension of time, such reliance clearly cannot create any rights not authorized by law.

APPEARANCES: Daniel R. Walsh, Esq., Carson City, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Elaine S. Stickelman filed a desert land entry (DLE) application on December 3, 1963, for approximately 320 acres of land located in the S\ SE^ sec. 34, T. 4 N., R. 48 E., and the NE^, NE^ SW^, NW^ SE^ sec. 3, T. 3 N., R. 48 E., Mount Diablo Meridian, Nevada. On October 29, 1965, the Bureau of Land Management (BLM) classified those lands as suitable for desert land entry and, by decision dated February 18, 1966, allowed Stickelman's entry. Final proof for the entry was due, pursuant to 43 U.S.C | 329 (1982), by February 18, 1970.

By letter dated December 2, 1969, Stickelman requested an extension of time for filing her final proof. As grounds for an extension, she cited her inability to obtain electricity to pump irrigation water due to a power company transfer. Pursuant to the Act of March 28, 1908, 43 U.S.C. | 333 (1982), BLM granted her a 2-year extension until February 18, 1972. 1/

Citing illness and hospitalization, Stickelman submitted a second request for extension on February 10, 1972. A BLM employee inspected her entry on October 15, 1971, and February 15, 1972, and concluded that the entry had been completely abandoned since December 1969. BLM denied this second extension request by decision dated March 10, 1972.

She appealed, and in Elaine S. Stickelman, 9 IBLA 327 (1973), the Board concluded that her illness did not satisfy the statutory requirement of unavoidable delay, as set forth in 43 U.S.C. | 334 (1970), 2/ and that a second extension is properly denied an entryperson who fails to make use of the first extension. Although Stickelman alleged that she had spent \$18,000 on improvements on her entry, the Board found the expenditure did "not mitigate Stickelman's failure to show any attempt at utilizing her first extension. These expenses were incurred during appellant's original entry upon the land." 3/ Elaine S. Stickelman, supra at 331.

1/ The Act of Mar. 28, 1908, 43 U.S.C. | 333 (1982), states:

"Any entryman under sections 321 to 323, 325, and 327 to 329 of this title who shall show to the satisfaction of the Secretary of the Interior or such officer as he may designate that he has in good faith complied with the terms, requirements, and provisions of said sections, but that because of some unavoidable delay in the construction of the irrigating works intended to convey water to the said lands, he is, without fault on his part, unable to make proof of the reclamation and cultivation of said land, as required by said sections, shall, upon filing his corroborated affidavit with the land office in which said land is located, setting forth said facts, be allowed an additional period of not to exceed three years, within the discretion of the Secretary or such officer, within which to furnish proof * * *."

See also 43 CFR 2522.3.

2/ The Act of Apr. 30, 1912, 43 U.S.C. | 334 (1982), provides for further extension of time for final proofs by stating, in relevant part:

"The Secretary of the Interior may, in his discretion, in addition to the extension authorized by section 333 of this title or other law existing prior to April 30, 1912, grant to any entryman under the desert-land laws a further extension of the time within which he is required to make final proof: Provided, That such entryman shall, by his corroborated affidavit filed in the land office of the district where such land is located, show to the satisfaction of the Secretary that because of unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry he is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands as required by law within the time limited therefor: but such extension shall not be granted for a period of more than three years * * *."

See also 43 CFR 2522.4.

3/ Although appellant does not make any current allegation concerning how much she has invested in reclaiming her DLE, the record suggests that the

Stickelman sought judicial review of that decision in the United States District Court for the District of Nevada. The court summarily dismissed the case; however, on appeal the United States Court of Appeals for the Ninth Circuit found that Stickelman had been denied certain procedural protections which required that the matter be remanded for further action by the District Court and the Department. Stickelman v. United States, 563 F.2d 413 (9th Cir. 1977). Further, the court noted:

We express no opinion on the merits of Stickelman's claims. We do not know whether her factual allegations will be proved. We do not decide whether, if proved, they would meet the requirements of the first proviso of [43 U.S.C.] | 334, nor do we decide whether, assuming they do meet those requirements, the Secretary would be justified in exercising his discretion to refuse the extension.

Stickelman v. United States, *supra* at 417-18.

In February of 1978, the parties reached a settlement agreement, wherein the Department agreed to grant Stickelman a 3-year extension of time within which to make final proof.

In November 1979, well before expiration of her 3-year extension, Stickelman requested an extension of 2 years within which to make final proof. Accompanying her request was a November 28, 1979, letter from the State Engineer, Nevada Department of Conservation and Natural Resources (NDCNR), which indicated processing of her application was delayed due to litigation involving other applications in the same valley. ^{4/} BLM informed Stickelman in January 1980 that her request was premature, but that it foresaw no problem in granting the request at the expiration of the 3-year period. ^{5/} Thereafter, citing the Act of March 28, 1908, 43 U.S.C. | 333 (1982), BLM issued a January 30, 1981, decision extending the deadline for filing final proof until February 15, 1983.

By letter dated February 6, 1983, Stickelman requested her fourth extension of time for filing final proof, alleging continued inaction by

fn. 3 (continued)

\$18,000 which she spent during the original 4 years of her entry is still all that has been incurred. See May 15, 1987, BLM report of field investigation of appellant's entry.

^{4/} The State Engineer, NDCNR, had issued Stickelman permit 22619 on Apr. 14, 1966, and had subsequently changed it to permit 24410. Permit 24410 was cancelled on May 16, 1972, for failure to comply with the permit provisions. Consequently, she was forced to reapply for water rights. Her reapplication, labelled 32612 by the State of Nevada, pertained to the same land as permits 22619 and 24410.

^{5/} The file contains a memorandum from the Regional Solicitor, Sacramento Region, to the BLM Nevada State Director, dated Dec. 7, 1979, stating: "It would appear that 43 U.S.C. | 336 would allow you to extend Mrs. Stickelman's time to make final proof on her desert land entry for an additional period of three years should you so desire."

NDCNR on her water-rights application. On February 8, 1983, again citing the Act of March 28, 1908, 43 U.S.C. | 333 (1982), as authorization, BLM extended Stickelman's deadline for filing final proof until February 15, 1985.

Prior to that date, Stickelman sought, by letter dated February 5, 1985, her fifth extension of time, asserting through counsel that NDCNR had not yet acted on her water-rights application, but that "a hearing was recently held before the State Engineer's office and a decision should be forthcoming." 6/ On February 25, 1985, BLM granted the extension until February 15, 1987, indicating its action was taken pursuant to the Act of March 28, 1908, 43 U.S.C. | 334 (1982).

Stickelman filed her sixth extension of time request with BLM on February 11, 1987. Therein, she claimed that NDCNR had been unable to act upon her application for water rights due to "other litigation in Stone Cabin Valley." By decision dated July 29, 1987, BLM denied that request stating that there was a lack of authority to grant another extension, explaining:

As a result of a third request for extension, this office, by decision of January 3[0], 1981, extended the time to make final proof until February 15, 1983. While that decision incorrectly cites the Act of March 28, 1908 as the authority, the only authority we could have granted a third extension under was the Act of February 25, 1925 (43 U.S.C. 336).

By decisions dated February 8, 1983 and February 25, 1985, the time for filing the final proof was extended until February 15, 1987. We find that these decisions were incorrectly issued since there was no statutory authority under which further extensions could be granted.

On February 11, 1987 another request for extension of time was filed * * *. We cannot allow an extension of time because we have no legal authority to do so. The request is hereby denied and the entry is cancelled * * *.

(Decision at 2).

Stickelman timely filed her appeal of that decision with this Board. In her statement of reasons (SOR), she first argues that 43 U.S.C. || 333, 334, and 336 (1982) 7/ each authorize BLM to grant more than one extension

6/ Counsel for appellant makes no further mention of that "forthcoming decision." In addition, the record contains no explanation of the nature and extent of litigation involving other water-rights applications, which allegedly precluded appellant from proceeding with her efforts to make final proof.

7/ The Act of Feb. 25, 1925, 43 U.S.C. | 336 (1982), states:

"The Secretary of the Interior may, in his discretion, in addition to

to an entryperson, assuming certain statutory and regulatory requirements are met. Appellant interprets that first statutory section as allowing one or more initial extensions not to exceed 3 years; a second period of discretionary extensions under section 334, not to exceed 6 years when combined with the section 333 extensions; and additional discretionary extensions, pursuant to section 336, each not to exceed 3 years.

[1] Appellant's reading of those statutory provisions is inconsistent with their clear language and with Departmental decisions interpreting them. The language of these sections is clearly singular; provision is made in 43 U.S.C. | 333 (1982), for "an additional period;" and in 43 U.S.C. | 334 (1982), and 43 U.S.C. | 336 (1982), for "a further extension of time." (Emphasis supplied.) It is a fundamental principle of statutory construction that words are to be taken in their ordinary meaning, unless they are technical terms or words of art. Juanita Melsheimer v. Assistant Secretary for Indian Affairs, 11 IBIA 155, 90 I.D. 165 (1983). "A" and "an" are not technical words, nor are they words of art. Thus, they must be given their common meaning. Moreover, this Department has long held that the above-cited statutes allow only one extension each. Marian Ruth Smith, A-27537 (Jan. 24, 1958), and John H. Reeve, A-24544 (Feb. 28, 1947).

Therefore, under the pertinent extension statutes and the implementing regulations, the maximum number of extensions available to a desert land entryperson is three. In this case, BLM cited the Act of March 28, 1908, 43 U.S.C. | 333 (1982), as authorization for four extensions, three more than that section actually allows, and one more than the total allowed by all three relevant extension statutes. As 43 U.S.C. | 334 (1982) served as the basis for the 3-year extension in 1978, upon receipt of a sixth request for extension in 1987, BLM determined that the 1981 extension, purported to have been issued pursuant to 43 U.S.C. | 333 (1982), actually should have been issued pursuant to 43 U.S.C. | 336 (1982). Thus, BLM concluded appellant had received at least one extension under each of the available acts and, therefore, no statutory authorization existed for an additional extension.

fn. 7 (continued)

the extensions authorized by sections 333 to 335 of this title or other law existing prior to February 25, 1925, grant to any entryman under the desert-land laws of the United States a further extension of time of not to exceed three years within which to make final proof: Provided, That such entryman shall, by his corroborated affidavit, * * *, show to the satisfaction of the Secretary that because of unavoidable delay in the construction of the irrigation works intended to convey water to the land embraced in his entry, he is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands, as required by law within the time limited therefor: And provided further, That the entryman * * * has in good faith complied with the requirements of law as to yearly expenditures and proof thereof, and shall show, under rules and regulations to be prescribed by the Secretary of the Interior, that there is a reasonable prospect that if the extension is granted he will be able to make the final proof of reclamation, irrigation, and cultivation required by law."

See also 43 CFR 2522.5.

Appellant maintains that even if 43 U.S.C. | 336 (1982) allows only one extension, BLM may not retroactively apply that section to the extension granted in 1981, as the decision granting that extension cited 43 U.S.C. | 333 (1982). Appellant alleges she relied on BLM's representation that the previous extensions were based on 43 U.S.C. | 333 (1982) "and reasonably concluded that an extension was available under | 336" (SOR at 7). In essence, appellant is arguing that BLM is estopped from denying her another extension.

This Board has adopted the elements of estoppel described in United States v. Georgia-Pacific Co., 421 F.2d 92, 96 (9th Cir. 1970). Those elements are: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury. Georgia-Pacific Co., *supra* at 96, quoting Hampton v. Paramount Pictures Corp., 279 F.2d 100, 104 (9th Cir. 1960).

Furthermore, this Board has stated: "Estoppel is an extraordinary remedy, especially as it relates to the public lands. Harold E. Woods, 61 IBLA 359, 361 (1982). In addition, estoppel against the Government in matters concerning the public lands must be based upon affirmative misconduct, such as misrepresentation or concealment of material facts." Enfield Resources, 101 IBLA 120, 124 (1988). Finally, as a precondition for invoking estoppel, the erroneous advice upon which reliance is predicated must be in the form of a crucial misstatement in an official decision. Enfield Resources, *supra* at 126.

[2] We find that estoppel does not lie in this case. We cannot accept that appellant was ignorant of the true facts. The statutes and the regulations (43 U.S.C. || 333, 334, and 336 (1982) and 43 CFR 2522.3 through 2522.5), as well as Departmental precedent, all clearly indicate that one extension is available under each Act. It is well established that all persons who deal with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Venlease I, 99 IBLA 387, 390 (1987). Thus, estoppel cannot be applied to the benefit of appellant as she must be considered to have been aware that only one extension was available under each of the three extension statutes. Moreover, there is no evidence of affirmative misrepresentation or concealment of material facts by BLM. B. K. Killion, 90 IBLA 378 (1986).

There is evidence of incorrect citations by BLM in its decisions in 1981, 1983, and 1985, regarding the authority for granting extensions. However, to the extent appellant may have relied on those incorrect citations and concluded that the availability of an extension under 43 U.S.C. | 336 (1982) still existed, we find that reliance unfounded. Reliance on incorrect or incomplete information provided by Federal employees cannot create any rights not authorized by law. 43 CFR 1810.3(c); Parker v. United States, 461 F.2d 806 (Ct. Cl. 1972); Montilla v. United States, 457 F.2d 978 (Ct. Cl. 1972); Marie M. Bunn, 100 IBLA 1, 4 (1980). Appellant has no right under law to an additional extension, and she cannot rely on the incorrect citations included in the BLM decisions granting the requested extensions of time to create such a right.

Appellant also maintains that BLM exceeds its authority by retroactively changing the authority under which her extensions were granted, especially without notification. Appellant has no grounds for complaint. First, in essence, there was no retroactive change by BLM. BLM's July 1987 decision merely noted that at the time of appellant's third request for extension, the only statutory basis for granting a further extension was 43 U.S.C. | 336 (1982), and that the 1983 and 1985 decisions were, therefore, improperly issued because no statutory authority existed for those extensions. Second, regardless of the cited statutory basis, pertinent authority for just three extensions of time to file exists, yet appellant received five extensions. We conclude that BLM properly denied appellant's request for extension due to a lack of legal authority to grant another extension.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appealed decision is affirmed.

Bruce R. Harris
Administrative Judge

I concur:

John H. Kelly
Administrative Judge